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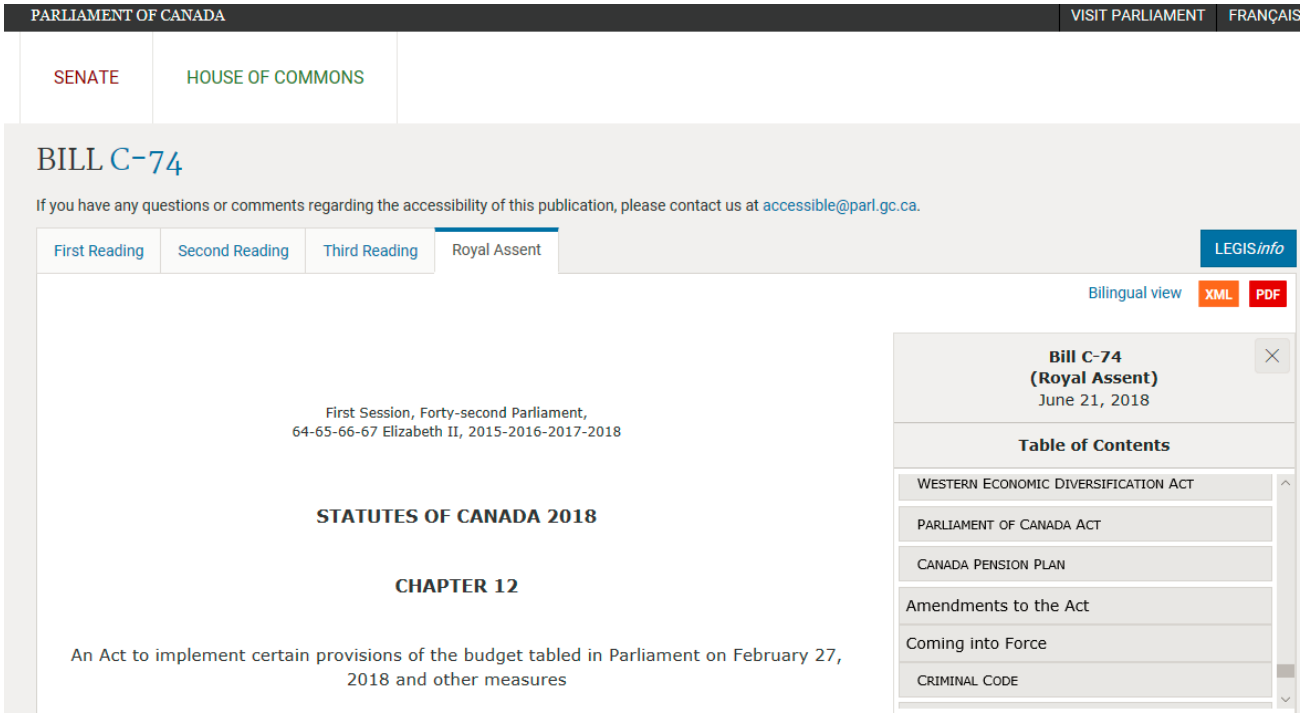
MARCH 12, 2019 BY RONNIE

Canada’s Bill C-74, Deferred Prosecution Agreement, and OECD Anti-Bribery Agreement



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Jody Wilson-Raybould resigns from cabinet

In a letter published on her website, Wilson-Raybould does not say exactly why she’s quitting

by The Canadian Press Feb 12, 2019

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OECD announces it is monitoring SNC-Lavalin scandal, raising prospect Canada has violated international anti-bribery agreement

'The OECD Working Group on Bribery... notes that the Canadian authorities stress that they are transparent and independent'

NP Jody Wilson-Raybould's full statement on SNC-Lavalin controversy Watch later Share

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OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The OECD Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction.

Text of the Convention

This booklet contains the official text and commentaries of the 1997 Convention, the 2009 Recommendation of the Council for Further Combating Bribery, the 2009 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials and other related instruments:

English | French

Unofficial translations which do not include the May 2011 updates to the OECD Guidelines for Multinational Enterprises section on combating bribery, bribe solicitation and extortion are also available:

Arabic | Chinese | Spanish

KEY DATES & FIGURES

17 December 1997: Signature of the Convention
15 February 1999: Entry into force of the Convention
44 Signatories: All OECD countries and 8 non-OECD countries
List of entry into force by country
Status of ratification
Timeline of 20 years of implementation
Fighting the crime of foreign bribery in a nutshell

1. Important Links

(1) http://www.parl.ca/DocumentViewer/en/42-1/bill/C-74/royal-assent

(2) http://archive.is/wip/14Scd

(3) https://www.dentons.com/en/insights/alerts/2018/april/11

(4) http://archive.is/wip/q6KsR

(5) https://www.macleans.ca/news/canada/jody-wilson-raybould-resigns-from-cabinet/

(6) http://archive.is/wip/BxmzN
(7) https://globalnews.ca/news/5012770/jody-wilson-raybould-snc-lavalin-david-lametti/
(8) https://www.youtube.com/watch?v=MkDweZcSO-E
(9) https://nationalpost.com/news/politics/oecd-announces-it-is-monitoring-snc-lavalin-scandal-raising-prospect-canada-has-violated-international-anti-bribery-agreement
(10) http://www.oecd.org/corruption/oecdantibriberyconvention.htm
(11) http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

(12) https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/clntSmmry?clientOrgCorpNumber=359826&sMdKy=1562758127214
(13) https://www.elections.ca/WPAPPS/WPF/EN/CCS/ContributionReport?returnS

2. Some Context

This is supposedly a budget bill, but is in fact an omnibus bill (a bloated bill with many unrelated provisions), At the very end is Part 6, Division 20. Presumably it was tacked on as an afterthought.

The "Deferred Prosecution Agreement" (or DPA), is a mechanism which corporations can avoid criminal penalties in Canada. Under Canadian law, a company found guilty in criminal court would be prohibited from bidding on government contracts for a period of 10 years. Obviously, this would hurt the company.

Of course, if it looks like Government influence helped a company avoid criminal penalties, it would stink of corruption, as seems to be the case with Quebec engineering firm SNC Lavalin.

Former Attorney General Jody Wilson-Raybould resigned from her post after being pressured by the Trudeau Government to cut such a deal for SNC Lavalin, and help the company avoid criminal penalties.

If that didn't stink enough, her successor, David Lametti, claimed he knew nothing, about the deal when he took over. He also took Trudeau's word that nothing inappropriate happened. It doesn't help that Lametti is from Montreal (as is SNC Lavalin).

Worse still, is that Lametti seems content with letting SNC Lavalin get its DPA anyway, which is what Wilson-Raybould had been pressured to do.

The Organization for Economic Development & Cooperation (OEDC), would also consider such actions to violate the multi-nation Anti-Bribery Agreement. So the fallout seems to be spreading, not being contained.

3. Content Of Deferred Prosecution Agreement

Summary, Part 6, Division 20

Division 20 of Part 6 amends the Criminal Code to establish a remediation agreement regime. Under this regime, the prosecutor may negotiate a remediation agreement with an organization that is alleged to have committed an offence of an economic character referred to in the schedule to Part XXII.1 of that Act and the proceedings related to that offence are stayed if the organization complies with the terms of the agreement.

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Text Of Bill

PART XXII.1

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Remediation Agreements

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Definitions

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715.3 (1) The following definitions apply in this Part.

court means a superior court of criminal jurisdiction but does not include a court of appeal. (tribunal)

offence means any offence listed in the schedule to this Part. (infraction)

organization has the same meaning as in section 2 but does not include a public body, trade union or municipality. (organisation)

remediation agreement means an agreement, between an organization accused of having committed an offence and a prosecutor, to stay any proceedings related to that offence if the organization complies with the terms of the agreement. (accord de réparation)

victim has the same meaning as in section 2 but, with respect to an offence under section 3 or 4 of the Corruption of Foreign Public Officials Act, it includes any person

outside Canada. (victime)

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Acting on victim's behalf

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(2) For the purposes of this Part, a third party not referred to in section 2.2 may also act on a victim's behalf when authorized to do so by the court, if the victim requests it or the prosecutor deems it appropriate.

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Purpose

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715.31 The purpose of this Part is to establish a remediation agreement regime that is applicable to organizations alleged to have committed an offence and that has the following objectives:

(a) to denounce an organization's wrongdoing and the harm that the wrongdoing has caused to victims or to the community;

(b) to hold the organization accountable for its wrongdoing through effective, proportionate and dissuasive penalties;

(c) to contribute to respect for the law by imposing an obligation on the organization to put in place corrective measures and promote a compliance culture;

(d) to encourage voluntary disclosure of the wrongdoing;

(e) to provide reparations for harm done to victims or to the community; and

(f) to reduce the negative consequences of the wrongdoing for persons — employees, customers, pensioners and others — who did not engage in the wrongdoing, while holding responsible those individuals who did engage in that wrongdoing.

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Conditions for remediation agreement

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715.32 (1) The prosecutor may enter into negotiations for a remediation agreement with an organization alleged to have committed an offence if the following conditions are met:

(a) the prosecutor is of the opinion that there is a reasonable prospect of conviction with respect to the offence;

(b) the prosecutor is of the opinion that the act or omission that forms the basis of the offence did not cause and was not likely to have caused serious bodily harm or death, or injury to national defence or national security, and was not committed for the benefit of, at the direction of, or in association with, a criminal organization or terrorist group;

(c) the prosecutor is of the opinion that negotiating the agreement is in the public interest

and appropriate in the circumstances; and

(d) the Attorney General has consented to the negotiation of the agreement.

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Factors to consider

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(2) For the purposes of paragraph (1)(c), the prosecutor must consider the following factors:

(a) the circumstances in which the act or omission that forms the basis of the offence was brought to the attention of investigative authorities;

(b) the nature and gravity of the act or omission and its impact on any victim;

(c) the degree of involvement of senior officers of the organization in the act or omission;

(d) whether the organization has taken disciplinary action, including termination of employment, against any person who was involved in the act or omission;

(e) whether the organization has made reparations or taken other measures to remedy the harm caused by the act or omission and to prevent the commission of similar acts or omissions;

(f) whether the organization has identified or expressed a willingness to identify any person involved in wrongdoing related to the act or omission;

(g) whether the organization — or any of its representatives — was convicted of an offence or sanctioned by a regulatory body, or whether it entered into a previous remediation agreement or other settlement, in Canada or elsewhere, for similar acts or omissions;

(h) whether the organization — or any of its representatives — is alleged to have committed any other offences, including those not listed in the schedule to this Part; and

(i) any other factor that the prosecutor considers relevant.

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Factors not to consider

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(3) Despite paragraph (2)(i), if the organization is alleged to have committed an offence under section 3 or 4 of the Corruption of Foreign Public Officials Act, the prosecutor must not consider the national economic interest, the potential effect on relations with a state other than Canada or the identity of the organization or individual involved.

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Notice to organization — invitation to negotiate

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715.33 (1) If the prosecutor wishes to negotiate a remediation agreement, they must

give the organization written notice of the offer to enter into negotiations and the notice must include

(a) a summary description of the offence to which the agreement would apply;

(b) an indication of the voluntary nature of the negotiation process;

(c) an indication of the legal effects of the agreement;

(d) an indication that, by agreeing to the terms of this notice, the organization explicitly waives the inclusion of the negotiation period and the period during which the agreement is in force in any assessment of the reasonableness of the delay between the day on which the charge is laid and the end of trial;

(e) an indication that negotiations must be carried out in good faith and that the organization must provide all information requested by the prosecutor that the organization is aware of or can obtain through reasonable efforts, including information enabling the identification of any person involved in the act or omission that forms the basis of the offence or any wrongdoing related to that act or omission;

(f) an indication of how the information disclosed by the organization during the negotiations may be used, subject to subsection (2);

(g) a warning that knowingly making false or misleading statements or knowingly providing false or misleading information during the negotiations may lead to the recommencement of proceedings or prosecution for obstruction of justice;

(h) an indication that either party may withdraw from the negotiations by providing written notice to the other party;

(i) an indication that reasonable efforts must be made by both parties to identify any victim as soon as practicable; and

(j) a deadline to accept the offer to negotiate according to the terms of the notice.

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Admissions not admissible in evidence

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(2) No admission, confession or statement accepting responsibility for a given act or omission made by the organization during the negotiations is admissible in evidence against that organization in any civil or criminal proceedings related to that act or omission, except those contained in the statement of facts or admission of responsibility referred to in paragraphs 715.34(1)(a) and (b), if the parties reach an agreement and it is approved by the court.

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Mandatory contents of agreement

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715.34 (1) A remediation agreement must include

(a) a statement of facts related to the offence that the organization is alleged to have committed and an undertaking by the organization not to make or condone any public statement that contradicts those facts;

(b) the organization's admission of responsibility for the act or omission that forms the basis of the offence;

(c) an indication of the obligation for the organization to provide any other information that will assist in identifying any person involved in the act or omission, or any wrongdoing related to that act or omission, that the organization becomes aware of, or can obtain through reasonable efforts, after the agreement has been entered into;

(d) an indication of the obligation for the organization to cooperate in any investigation, prosecution or other proceeding in Canada — or elsewhere if the prosecutor considers it appropriate — resulting from the act or omission, including by providing information or testimony;

(e) with respect to any property, benefit or advantage identified in the agreement that was obtained or derived directly or indirectly from the act or omission, an obligation for the organization to

(i) forfeit it to Her Majesty in right of Canada, to be disposed of in accordance with paragraph 4(1)(b.2) of the Seized Property Management Act,

(ii) forfeit it to Her Majesty in right of a province, to be disposed of as the Attorney General directs, or

(iii) otherwise deal with it, as the prosecutor directs;

(f) an indication of the obligation for the organization to pay a penalty to the Receiver General or to the treasurer of a province, as the case may be, for each offence to which the agreement applies, the amount to be paid and any other terms respecting payment;

(g) an indication of any reparations, including restitution consistent with paragraph 738(1)(a) or (b), that the organization is required to make to a victim or a statement by the prosecutor of the reasons why reparations to a victim are not appropriate in the circumstances and an indication of any measure required in lieu of reparations to a victim;

(h) an indication of the obligation for the organization to pay a victim surcharge for each offence to which the agreement applies, other than an offence under section 3 or 4 of the Corruption of Foreign Public Officials Act, the amount to be paid and any other terms respecting payment;

(i) an indication of the obligation for the organization to report to the prosecutor on the implementation of the agreement and an indication of the manner in which the report is to

be made and any other terms respecting reporting;
(j) an indication of the legal effects of the agreement;
(k) an acknowledgement by the organization that the agreement has been made in good faith and that the information it has provided during the negotiation is accurate and complete and a commitment that it will continue to provide accurate and complete information while the agreement is in force;
(l) an indication of the use that can be made of information obtained as a result of the agreement, subject to subsection (2);
(m) a warning that the breach of any term of the agreement may lead to an application by the prosecutor for termination of the agreement and a recommencement of proceedings;
(n) an indication of the obligation for the organization not to deduct, for income tax purposes, the costs of any reparations or other measures referred to in paragraph (g) or any other costs incurred to fulfil the terms of the agreement;
(o) a notice of the prosecutor's right to vary or terminate the agreement with the approval of the court; and
(p) an indication of the deadline by which the organization must meet the terms of the agreement.

Admissions not admissible in evidence
.
(2) No admission, confession or statement accepting responsibility for a given act or omission made by the organization as a result of the agreement is admissible in evidence against that organization in any civil or criminal proceedings related to that act or omission, except those contained in the statement of facts and admission of responsibility referred to in paragraphs (1)(a) and (b), if the agreement is approved by the court.

Optional content of agreement
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(3) A remediation agreement may include, among other things,
(a) an indication of the obligation for the organization to establish, implement or enhance compliance measures to address any deficiencies in the organization's policies, standards or procedures — including those related to internal control procedures and employee training — that may have allowed the act or omission;

(b) an indication of the obligation for the organization to reimburse the prosecutor for any costs identified in the agreement that are related to its administration and that have or will be incurred by the prosecutor; and
(c) an indication of the fact that an independent monitor has been appointed, as selected with the prosecutor's approval, to verify and report to the prosecutor on the organization's compliance with the obligation referred to in paragraph (a), or any other obligation in the agreement identified by the prosecutor, as well as an indication of the organization's obligations with respect to that monitor, including the obligations to cooperate with the monitor and pay the monitor's costs.

Oh, it gets much worse.

4. Anti-Corruption Agreements

Here is the CONVENTION itself:

"HAVE AGREED AS FOLLOWS:
.
Article 1
The Offence of Bribery of Foreign Public Officials
.
1. Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.
.
2. Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.
.

> 3. The offences set out in paragraphs 1 and 2 above are hereinafter referred to as "bribery of a foreign public official".

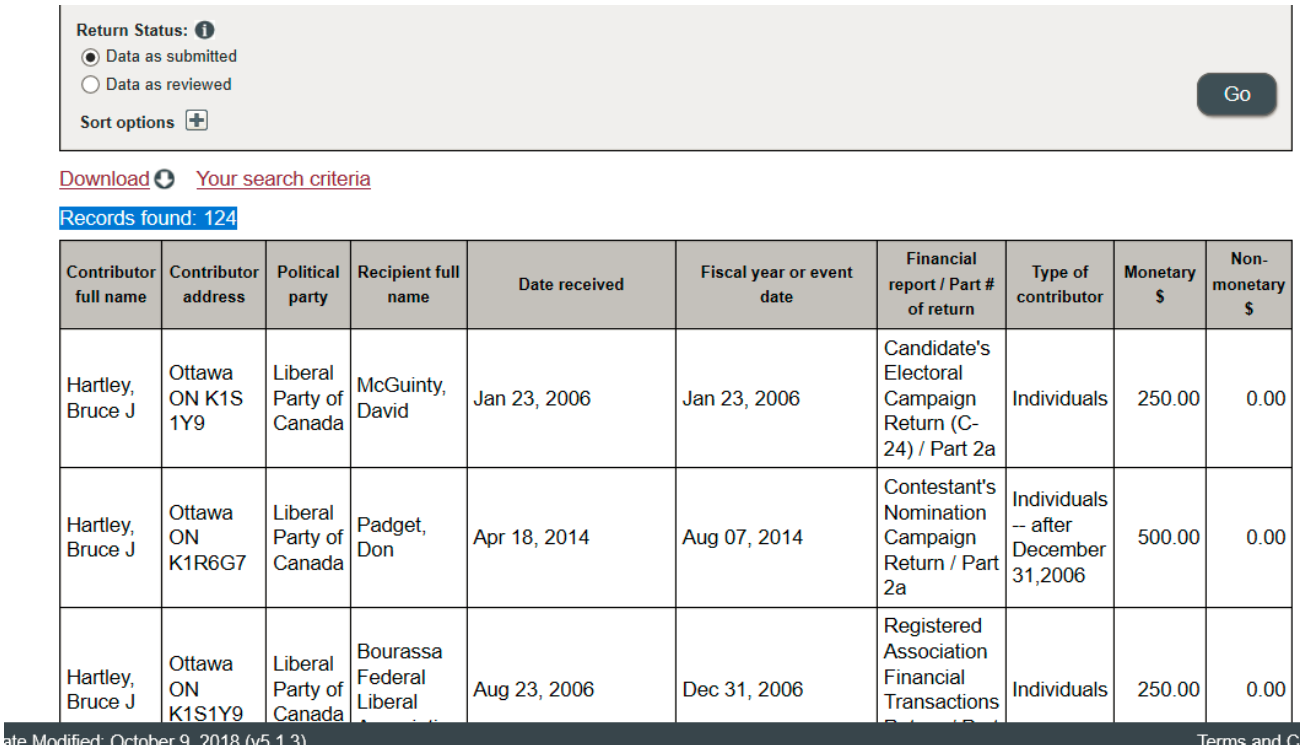
The document is quite long, and a read it recommended.

5. Liberal Donor Bruce Hartley Is Lavalin Lobbyist

How did this DPA come to be. Perhaps one name can explain it: Bruce Hartley.

Hartley has been a long time Liberal donor. He now is a registered lobbyist with SNC-Lavalin. One of his specific lobbying targets was the creation of the DPA.

(Hartley has made 124+ donations to the Liberal Party and its members since 2005).



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- ( ) Data as reviewed

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Contributor full name	Contributor address	Political party	Recipient full name	Date received	Fiscal year or event date	Financial report / Part # of return	Type of contributor	Monetary $	Non-monetary $
Hartley, Bruce J	Ottawa ON K1S 1Y9	Liberal Party of Canada	McGuinty, David	Jan 23, 2006	Jan 23, 2006	Candidate's Electoral Campaign Return (C-24) / Part 2a	Individuals	250.00	0.00
Hartley, Bruce J	Ottawa ON K1R6G7	Liberal Party of Canada	Padget, Don	Apr 18, 2014	Aug 07, 2014	Contestant's Nomination Campaign Return / Part 2a	Individuals -- after December 31,2006	500.00	0.00
Hartley, Bruce J	Ottawa ON K1S1Y9	Liberal Party of Canada	Bourassa Federal Liberal	Aug 23, 2006	Dec 31, 2006	Registered Association Financial Transactions	Individuals	250.00	0.00

ate Modified: October 9, 2018 (v5.1.3) Terms and C

(Hartley is registered as a Lavalin lobbyist.)

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12-Month Lobbying Summary - Consultant

Email

SNC-Lavalin Inc. / BRUCE HARTLEY, Consultant

Registration Summary | Monthly Communication Reports

Currently active - Last Updated: **2018-03-16**

Who is lobbying?

SNC-Lavalin Inc. (Address & principal representative)

Business Relationships

- SNC-Lavalin Inc. is not a subsidiary of any other parent companies.
- SNC-Lavalin Inc. is not a coalition.

Received Government Funding

Beneficiaries of the Lobbying Activity

- The activities of SNC-Lavalin Inc. are not controlled or directed by another person or organization with a direct interest in the outcome of this undertaking.
- SNC-Lavalin Inc. does not have any subsidiaries that could have a direct interest in the outcome of the undertaking

(Hartley's job includes lobbying for DPA)

What is being lobbied?

Subject Matters

- Aboriginal Affairs
- Budget
- Climate
- Energy
- Environment
- Government Procurement
- Immigration
- Industry
- International Development
- International Relations
- International Trade
- Justice and Law Enforcement

Subject Matter Details

Legislative Proposal, Bill or Resolution, Policies or Program, Regulation

- The introduction of Deferred Prosecution Agreement (DPA) legislation/regulation/program or policies. DPAs are sentencing agreements negotiated between a prosecution authority and a corporation charged with an offence, usually in the context of white collar crime.

Policies or Program

- Canadian international development via Global Affairs Canada (GAC) re policies on funding international development projects; on every available occasion advocate GAC to manage more of its own development resources and open more of its projects to untied competitive bidding by private sector firms as is the practice other aid agencies such as UK's Department for International Development (DFID)
- Efficient approval processes for major energy projects
- Foreign policies as they affect trade; maintaining and increasing

6. Bottom Line

1/ The Federal Government added this "Deferred Prosecution Agreement" into the Criminal Code to allow companies to avoid criminal penalties (and the bulk of financial penalties), under this arrangement. This is stuffed into the end of a completely unrelated budget bill.
2/ Attorney General Jody Wilson-Raybould resigned after she alleges being pressured to cut a deal with Quebec engineering firm, SNC Lavalin
3/ Federal Government denies this, claims it was a "misunderstanding"
4/ New AG says he sees nothing wrong, and may still give DPA to SNC Lavalin.
5/ Public interest and outrage in story is growing.
6/ This DPA appears to violate international anti-bribery agreement.
7/ Liberal donor Bruce Hartley is now an SNC-Lavalin lobbyist, and is tasked with pushing for the creation of the DPA.

CANADIAN BILLS, CORPORATE, CRIMINAL, SNC LAVALIN, WORLD